

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

DECEMBER 12, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1543-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAMES R. BROWNSON,

Defendant-Appellant.

APPEAL from an order of the circuit court for Outagamie County:
JAMES T. BAYORGEON, Judge. *Affirmed.*

LaROCQUE, J. James Brownson, convicted of two counts of failing to obey a special order of the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP), appeals an order denying postconviction relief.¹ He contends that a condition of his probation barring his

¹ Section 100.26(3), STATS., provides:

Any person who violates s. 100.15 or 100.19, or who intentionally refuses, neglects or fails to obey any regulation or order made or issued under s. 100.19 or 100.20, shall, for each offense, be fined not less than \$25 nor more than \$5,000, or imprisoned in the county jail for not more than one year or both.

employment in the construction industry violates his constitutional right to access to employment. The DATCP Stipulation for Special Order No. 1524, dated June 24, 1981, was issued pursuant to Brownson's stipulation following an earlier 1981 conviction under Wisconsin's home improvement code. Brownson also claims that a prosecution based on a 1981 stipulation is invalid as either (a) outside the six-year statute of limitations for actions on contract or (b) outside the time period for which he could have been placed on probation following his 1981 conviction. Because the condition of probation is reasonably related to protecting the public from fraud, and because the 1981 order remains valid, the order denying relief is affirmed.

The Stipulation for Special Order No. 1524 was issued in 1981 pursuant to § 100.20(3), STATS.² The order incorporates a stipulation between DATCP and Brownson that recites the fact that Brownson was convicted on February 16, 1981, in Outagamie County Circuit Court of violating WIS. ADMIN. CODE § Ag 110 relating to home improvement violations, and that Brownson was placed on probation for six months and ordered to make restitution. Brownson further stipulated, as a condition to withholding further sentence, to the entry of the special order in question. His stipulation accepted the terms of the order governing Brownson's business practices in connection with the solicitation and performance of contracts for the construction, repair or improvement of residential and noncommercial property. There was no expiration time expressed.

Brownson first contends that because the order that led to his present conviction related to residential and noncommercial construction, the condition of probation banning participation in any form of building

² Section 100.20(3), STATS., provides:

The department, after public hearing, may issue a special order against any person, enjoining such person from employing any method of competition in business or trade practice in business which is determined by the department to be unfair or from providing service in violation of sub. (1t). The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of competition in business or trade practice in business which is determined by the department to be fair.

construction is unreasonably broad. Brownson's contention ignores the evidence presented at the sentencing hearings.

A DATCP investigator testified to department involvement with consumer complaints against Brownson over a fifteen-year period. He described the repetitious nature of the offenses involving many thousands of dollars. At least twenty-four violations on Brownson's record involved consumer fraud relating to construction practices. He related Brownson's scheme of contracting by use of false performance or pricing promises, his abuse of the judicial process to delay and impede the consumers' attempts at civil redress, and his characterization by one victim as the "Contractor from Hell." Brownson's criminal record includes twenty-nine convictions. He served prison time, received probation and parole and yet persisted in his illegal contracting practices. The court heard testimony that Brownson attempted to avoid the legal restrictions by the use of family members, corporations and "trust" arrangements.

A sentencing court may impose "any conditions which appear to be reasonable and appropriate." Section 973.09(1)(a), STATS. The goals of probation are rehabilitation and protection of the public. *State v. Tarrell*, 74 Wis.2d 647, 653, 247 N.W.2d 696, 700 (1976). Conditions of probation may impinge upon constitutional rights as long as they are not overly broad and are reasonably related to the legitimate purposes of probation. *State v. Miller*, 175 Wis.2d 204, 208, 499 N.W.2d 215, 216 (Ct. App. 1993). Conditions of probation do not have to relate to the offense for which the defendant is convicted as long as they are reasonably related to the purposes of probation. See *id.* at 208-09, 499 N.W.2d at 216.

Wisconsin has adopted § 3.2 of the American Bar Association *Standards Relating to Probation* (Approved Draft 1970), which sets forth appropriate conditions of probation. *Huggett v. State*, 83 Wis.2d 790, 796, 266 N.W.2d 403, 406 (1978). Section 3.2 provides in part:

(c) Conditions may appropriately deal with matters such as the following:

....

- (iii) maintaining steady employment or engaging or refraining from engaging in a specific employment or occupation

The trial court could reasonably conclude, in light of Brownson's startling recidivism, and his persistent pursuit of loopholes, that a ban limited to residential construction merely would invite a shift to illegal nonresidential construction practices.

Next, Brownson cites no authority for the proposition that the 1981 order is not enforceable. The statute of limitations relating to contracts has no application to enforcement of an order. The statutory limit on the length of probation is inapplicable because the gist of the current offense is not the violation of probation; it punishes the violation of a valid order. Finally, there is nothing onerous about an order that essentially compels the subject to comply with the law.

By the Court. – Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.